



Rowan County Planning and Development Department

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STAFF REPORT

TO: Chairman Ford and Rowan County Board of Commissioners
FROM: Shane Stewart, Senior Planner
DATE: April 8, 2010
RE: **PCUR 02-10: RA to CBI-CUD for a Variety Store**
TP: 360-162 7115 Hwy 152 E Rockwell
Owner: Jackie Misenheimer Applicant: R&M Enterprises

BOARD OF COMMISSIONERS ACTION

- ☐ Sworn oath given to those presenting information
- ☐ Receive staff report
- ☐ Petitioner comments
- ☐ Conduct quasi-judicial hearing
- ☐ Close hearing and discuss case
- ☐ Grant, Deny, or Table request for **PCUR 02-10**

BACKGROUND

On December 21, 1995, Mr. Max Holshouser received approval for a minor subdivision establishing a .87 acre parcel (.53 acres outside r/w), which was isolated from his remaining 39 acres on the north side of Highway 152 (see Attachment A). Three weeks later, Mr. Robert Allen purchased this parcel containing a 1,100 sq.ft. building constructed in 1950 located at 7115 Hwy 152 East in Rockwell. The property contained a non-conforming automobile sales lot (Wheels N Deals), which operated until early 2005 (estimate) prior to the property being foreclosed by F&M Bank at the end of the year. Two months later, Ms. Gwen Chubirko with Genesis Realty requested a zone change from RA to CBI-CUD to allow all retail activity (except eating and drinking places) and four different types of service uses.

The Board of Commissioners (BOC) offered Ms. Chubirko the option of withdrawing the request in favor of consideration of a Special Use Permit (SUP), which would allow the BOC to approve transferring the non-conforming status from the automobile sales lot to another use of "equal or less intensity". Ms. Chubirko withdrew her request but did not file a subsequent SUP request. Per Section 21-137, a non-conforming use left vacant for 360 days shall only be re-established as a conforming use.

REQUEST

Ms. Jackie Misenheimer, who purchased the foreclosure from F&M Bank on October 31, 2007, has received interest from Mr. Richard Smith of R&M Enterprises of Salisbury LLC in purchasing this property if the requested change from Rural Agricultural (RA) to Commercial, Business, Industrial with an accompanying conditional use district (CBI-CUD) is approved. Mr. Smith proposes to operate a retail establishment offering a variety of new and used items including outdoor display within the existing fenced area (see enclosed pictures). Proposed business hours are 9AM to 6PM Monday – Saturday.

STAFF REVIEW: General Criteria

In accordance with Article XIV Section 21-362 (i), staff provides the following review:

ZONING CRITERIA

1. Relationship and conformity with any plans and policies.

Plans – N/A.

Policies – The applicant has provided the Planning Board encouraged site-specific plan for non-residential rezoning requests that are not contiguous to the requested zone, which ensures the property will not be changed to another use without subsequent BOC action and provides the option of mutually agreed upon conditions to further ensure compatibility.

Staff was of the opinion the previous application was not a true site-specific request in allowing a wide variety of uses unlike this application.

2. Consistency with the requested zoning district's purpose and intent.

"This zone allows for a wide range of commercial, business and light industrial activities which provide goods and services. This district is typically for more densely developed suburban areas, major transportation corridors, and major cross-roads communities. However this district may also exist or be created in an area other than listed in this subsection if the existing or proposed development is compatible with the surrounding area and the overall public good is served."

As depicted on the enclosed maps, the areas to the north and west contain a considerable number of residential dwellings clustered at a density near 2 units per acre giving the area a moderate suburban appearance. Highway 152 E is considered a Major Collector Road as identified by the Cabarrus-Rowan Metropolitan Planning Organization's (CRMPO) Long Range Transportation Plan (LRTP).

Factors sited within the statement of reasonableness will be key in determining whether this request is *"compatible with the surrounding area and the overall public good is served."*

3. Compatibility of all uses within the proposed district classification with other properties and conditions in the vicinity.

Compatibility of uses – Uses allowed with special requirements in the RA district are generally considered “compatible” with surrounding areas based on their administrative approval process. All retail operations except *Eating and Drinking Places* and *Adult Uses* are permitted in the RA district if the following requirements are met:

*** Zoned RA * State road frontage * Property / Business owner lives on property**

Conditions in the vicinity – See enclosed map.

North – Hope House family care home (7120 Hwy 152 E), Windsor Homeplace subdivision containing 19 lots of which 16 contain doublewide mobile homes with 35 acres for potential future development, and several other residences.

South – Frances Medlin Family Farms consisting of 176 wooded acres surrounding Shive Elementary School (655 Holshouser Rd).

East – Two singlewide mobile homes are located on a .61 acre parcel immediately adjacent representing the last county zoned parcel before the Town of Rockwell’s Extra Territorial Jurisdiction (ETJ) establishes their Residential Agricultural (RA) zoning district. Mr. Larry Brown owns a non-conforming 3,500 sq.ft. building constructed in 1960 currently used as a HVAC / welding shop located .37 miles west of this site.

West – Bost Tune-up (established in 1970) is the closest CBI district located .47 miles away. An additional .33 miles from Bost Tune-up is a 7.7 acre CBI zone surrounding the crossroads of Faith and Organ Church Roads both of which are major collectors.

4. Potential impact on facilities such as roads, utilities and schools.

Roads – Highway 152 East is classified as a major collector by the LRTP carrying an average daily traffic volume between 8,500 (east of Organ Church Road) and 6,600 (at the Rockwell Town Limits) based on 2008 North Carolina Department of Transportation (DOT) traffic count data. Comparatively, the 2000 DOT Thoroughfare Plan estimates this segment is able to carry 9,500 daily trips suggesting Highway 152 East is functioning between 90% - 70% at the above locations respectively.

Using trip estimations from “specialty retail centers” in the Institute of Transportation Engineers manual (7th Edition), this site could generate approximately 49 daily trips, which will not significantly impact the carrying capacity.

TIP #R-4062 is an unfunded 9.2 mile widening project for Highway 152 E extending from I-85 to Highway 52 in Rockwell that could include bike lanes and sidewalks within a 90 foot right-of-way (currently 60 feet). CRMPO identifies this as a 2035 horizon year project listed as priority number 18 out of 21 with a cost estimate of approximately \$20 million.

Utilities – In speaking with local environmental health staff, the septic system and associated drain lines appear to be completely covered with asphalt. Prior to a new well installed approximately one year ago, the site received potable water from across the road.

Schools – N/A.

CONDITIONAL USE CRITERIA

As provided in Article III Sec. 21-59, the applicant has provided responses to the evaluation criteria indicated below in Attachment B. Planning staff provides the following commentary:

1. Adequate transportation access to the site exists.

On March 15, 2010, DOT approved a commercial driveway permit for the existing connections subject to removal of poles within the right of way and a reconfiguration of the existing section of curb.

2. The use will not significantly detract from the character of the surrounding area.

The existing building was constructed 60 years ago and could remain in its current state regardless of this request. Nearly all of the surrounding residences were constructed after this building was built. A chain link fence, with partial privacy slats, currently extends along the eastern property line joining the building edge.

While this request seeks to re-capture full use of the existing commercial structure, the BOC should also consider the possibility of subsequent expansions of an established CBI zone in relation to the surrounding area.

3. Hazardous safety conditions will not result.

The Rowan County Building Inspections Office will ensure any future use comply with all applicable safety codes. The Rockwell Rural Fire Department, which currently maintains an ISO rating of 7, has access to a fire hydrant 1/3 mile east of the property.

4. The use will not generate significant noise, odor, glare or dust. N/A

5. Excessive traffic or parking problems will not result.

While the existing parking lot is very small, it should be able to accommodate a half-dozen vehicles on the western side of the building.

6. The use will not create significant visual impacts for adjoining properties or passersby.

See item #2 above.

ADOPTION OF STATEMENTS

Since this is a “small scale rezoning”, the Board of Commissioners must develop a statement of reasonableness before approving or deny this request to address any claims of “spot zoning”. This statement should provide the basis for the board’s decision and determine whether the request is “reasonable” and in the public interest. In addition, a statement of consistency is also necessary to address the relationship between this request and any applicable county adopted plans. Procedurally, these statements should be developed prior to making a decision to approve or deny the request. The Planning Board offers the following statements for consideration:

Reasonableness:

- *It would appear the size of the property / structure is not a problem for this use;*
- *There would be little impact on the surrounding area;*
- *The relationship of the use would be similar to the previous use.*

Consistency:

- *The use is consistent with the properties in the area and previous use.*

PROCEDURES

Consider the enclosed checklist as a guide in the decision process.

SPOT ZONING

Spot zoning may be simply defined as treating a small area different than that of the surrounding areas. Although spot zoning is not considered illegal in North Carolina, it must be considered “reasonable”. The courts have used the following tests to determine their legitimacy (David Owens):

1. Size of the tract;
2. Compatibility with a comprehensive plan;
3. Impact upon landowner, the immediate neighbors, and surrounding community; and
4. Relationship between newly allowed uses and those previously allowed.

MARCH 22, 2010 PLANNING BOARD MEETING

Only the applicant spoke at the courtesy hearing. The Planning Board voted unanimously (10-0) to recommend approval of the request as presented with no conditions.

STAFF COMMENTS

Several property owners voiced concerns with the previous request at meetings with the Planning Board and Board of Commissioners. Staff is concerned with potential spot zoning claims with this request and strongly encouraged the Planning Board to thoroughly address the reasonableness component of their decision. As with any site-specific zoning request, concerns from surrounding property owners could be incorporated within conditions of approval.